REMARKS

Favorable consideration and allowance are requested for claims 1-3, 6-8, and 37 in view of the following remarks.

Status of the Application

Claims 1-3, 6-8, and 37 are pending in this application. Claims 1-3, 6-8, 32, 33, and 37 were rejected under 35 U.S.C. § 103(a) as being unpatentable by Odom *et al.*, Cisco VoIP Call Admission Control (the "Odom reference") in view of U.S. Publication No. 2004/0078460 to Valavi *et al.* (the "Valavi publication"). Claims 4, 5, 9-23, 24-31 and 34-36 were previously canceled. Claims 32-33 are canceled by way of this amendment. Claim 1 has been amended.

Rejection under 35 U.S.C. § 103(a)

In response to the rejection, Applicants submit that the combination of the Odom reference and the Valavi publication does not teach or suggest the method claimed in claim 1.

As the Examiner acknowledges, Odom fails to disclose that a burst of trial data should be sent at a higher data rate than the packets to be transmitted. *Office Action, pg. 4.*

Odom also fails to disclose the burst of trial data (probing) from either a computer or a telephone attached to the network. Odom's probing is done from the router (*i.e.*, the outgoing or originating gateway). Odom's network management is network-based, as known in the prior art.

The question of whether Odom probes from the telephone is discussed in point 11 of the Office Action, in relation to Claims 32 and 33. Here the Office Action asserts that because Odom says CAC applies to voice traffic only, it must be done in the telephone. This assertion, however, is a complete non sequitur, because call admission control has never conventionally been done at the telephone.

In the conventional POTS ("Plain Old Telephone System") networks, the telephone going off-hook automatically sent a signalling request to the exchange for admission and all call admission control was done from the exchange. Odom is just as network-based as POTS.

Moreover, the Odom reference is a Cisco document and Cisco primarily makes network equipment, not telephones. The Odom reference states on page 1 that the target audience of the paper is network administrators and operations teams working for service providers. This intended audience is not people dealing with the telephone but with network equipment such as routers and gateways.

Figure 2 in the "Call Admission Control Overview" section of the Odom reference makes it absolutely clear that the CAC decisions are applied at the originating or outgoing gateway. Clearly, the gateway is not the telephone.

In this regard, there is nothing different about Figure 8 of the Odom reference, which is referred to in the Office Action. The CAC decision is being sent back to a PBX from a router (the gateway). Call admission control is not

being done at a telephone and one would never expect Cisco to be advocating that it was.

Turning to the Valavi publication, Applicants note that this reference deals with a form of network admission carried out at a node (the computer) attached to a network. However, this is data transmission. Just as the Office Action pointed out with regard to the Odom reference, call admission only applies to voice traffic. The data transmission, however, is not disclosed as voice traffic.

Moreover, the Valavi approach would not work with voice traffic because of the huge delay it would introduce with its slow start. In the Valavi publication, a computer goes into a "probe mode" prior to starting transmission. In probe mode, it sends packets at low priority and low data rate and gradually ramps up the data rate. In the end, the probe's data rate can go slightly above the intended transmission rate, but this only reflects the fact that the real transmission is expected to reach a slightly higher data rate due to fluctuations.

The Valavi publication's use of probing is not a burst of trial data as it lasts for "a few seconds" (paragraph [0033]) and gets several responses from the receiving end. This cannot be transferred to call admission as it would make call admission far too slow. The Valavi mechanism is based on what is described in the Applicants' specification as TCP-backoff. The Valavi publication just transfers the known technique TCP-backoff for data transmissions to the

computer instead of having it done in the network where Odom's network management is done.

Interestingly, Valavi uses the ramped transmission rate of its probe mode specifically to avoid probing immediately at the data rate of an intended transmission. This feature of Valavi's invention conflicts with the method of Applicants' claim 1 which instead uses just a trial burst at the higher data rate. The Valavi publication teaches that the longer the probe mode continues (paragraph [0033]), the better the result. This is just not practical with voice transmission.

Further, although it appears at first reading that the Valavi publication is talking about sending a probe at a higher final data rate than an actual transmission rate, in practice this is not so. It is just a reference to the fact that the desired transmission rate is a nominal rate. The actual rate will include the slightly higher rate because of fluctuation (paragraph [0025]). In contrast to the Valavi publication, Applicants' claim 1 refers to probing at a higher data rate than the packets to be transmitted, not a nominal, desired transmission rate.

In summary, the Odom reference teaches call admission control but in the network and not at a higher data rate. The Valavi publication teaches data transmission control from a computer, based on seconds-long periods of "probe mode" and not at a transmission rate higher than the real subsequent transmission rate. Accordingly, even if the teachings of these references are

combined, the combination fails to teach or suggest the method claimed in claim 1.

Therefore, claim 1 is patentable over the combination of Odom and Valavi.

Claims 2, 3, 6-8 and 37 are patentable due to their dependence from claim 1.

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If there are any questions regarding this amendment or the application in general, a telephone call to the undersigned would be appreciated since this should expedite the prosecution of the application for all concerned.

If necessary to effect a timely response, this paper should be considered as a petition for an Extension of Time sufficient to effect a timely response, and please charge any deficiency in fees or credit any overpayments to Deposit Account No. 05-1323 (Docket #038665.56184US).

Respectfully submitted,

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